

President's Secretariat (Public)  
 Aiwan-e-Sadr  
 ISLAMABAD  
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*Federal Board of Revenue  
 Versus  
 M/s LTHJV, Lahore*

**REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE AGAINST FINDINGS /  
 RECOMMENDATIONS DATED 29.08.2019 PASSED BY THE FTO IN COMPLAINT NO. 1053/LHR/IT/2019**

Kindly refer to your representation dated 30.09.2019 (received in this Secretariat on 01.10.2019) on the above subject addressed to the President in the background mentioned below:-

1. This Representation dated 30.09.2019 (received in this Secretariat on 01.10.2019) has been filed by the FBR against the orders of the learned FTO dated 29.08.2019, whereby it has been held that:

*"As the Deptt has allowed appeal effect under Section 124(4) of the Ordinance, vide order dated 11.07.2019 and has categorically consented that refund created as a result thereof shall be issued within 15 days; there is no need to go into legal and factual merits of the complaint. The complaint is, thus, disposed of with the direction to the Deptt to dispose of the Complainants' request for refund for Tax Year 2012, as per law and report compliance within 45 days."*

2. The background of the matter is that the complaint was filed under Section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 against delay in allowing appeal effect to the Commissioner-IR (CIR) (Appeals-IV) Lahore order dated 12.05.2017 and as a consequence non-settlement of the refund for the Tax Year 2012.

3. The Complainant, an Association of Person (AOP) deriving income from construction of buildings e-filed return of final taxation for Tax Year 2012 under Section 115(4) which was taken to be as assessment order in terms of Section 120(1)(b) of the Income Tax Ordinance, 2001 (the Ordinance). The Department (Deptt) subsequently, amended assessment proceedings for the Tax Year 2012, under Section 122 (1)(5) of the Ordinance vide order dated 16.12.2016 and recovered Rs.7.353 million through attachment of the Complainant's bank account. Later on, the CIR (Appeals-IV), Lahore vide order dated 12.05.2017 annulled the amended assessment dated 16.12.2016, and as a result whereof, the amount recovered by the Deptt became refundable. According to the Authorized Representative (AR), the Complainant thereafter approached the Deptt vide letter dated 03.06.2017, followed by reminders dated 26.02.2019, 05.03.2019 and 04.05.2019 with the request to allow appeal effect to the CIR (Appeals) Lahore's order dated 12.05.2017, in terms of Section 124(4) of the Ordinance, and issuance of refund but failed to evoke any response. He thus filed complaint of maladministration before the learned FTO.

4. The complaint was sent for comments to the Secretary, Revenue Division, in terms of Section 10(4) of the FTO Ordinance read with Section 9(1) of the Federal Ombudsmen Institutional Reforms Act, 2013. In response thereto, the FBR vide letter dated 28.05.2019 forwarded parawise comments of the CIR, Zone-III, RTO-II, Lahore dated 23.05.2019, raising preliminary objection regarding bar of jurisdiction in terms of Section 9(2)(b) of the Federal Tax Ombudsman Ordinance. Reference was also made to the President of Pakistan order in complaint No. 654/LHR/IT(550)/1153/10 (M/s Colenco Power Vs FBR), Order No.122/FTO/2016 dated 21.11.2016 (M/s Wajda International (Pvt) Limited Vs FBR) and Honourable Lahore High Court's judgment in WP-5999/2017. On merits, it was contended that the Deptt had already filed appeal against the appellate order dated 12.05.2017, which was now pending before the Appellate Tribunal Inland Revenue (ATIR) Lahore. It was further contended that as there was no stay order about the tax demand for Tax Year 2012

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it was recovered through attachment of the Complainant's bank account. The Authorized Representative (AR) filed rejoinder reiterating that despite the fact that relief was given by the CIR (Appeals) Lahore, the Deptt had failed to allow appeal effect within the stipulated time and issue refund due, as per law.

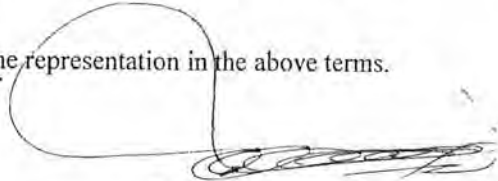
5. With this background, after due consideration, the learned FTO has passed the aforementioned order.

6. The instant representation has been made by the Agency-FBR. The hearing of the case has been held on 10.12.2019. Mr. Ali Raza Gilani ACIR and Syed Mohsin has represented the FBR. On the other hand, Mr. Hassan Kamran Advocate has appeared on behalf of M/s LTHJV (complainant). Both sides have been afforded opportunity of hearing.

7. A thorough perusal of record and examination of all documents on record has been undertaken. The learned FTO has categorically mentioned that *the Departmental Representative (DR) confirmed that the Deptt has now allowed appeal effect to the appellate order dated 12.05.2017 under Section 124 (4) of the Ordinance, vide order dated 11.07.2019. As a result, the original order under Section 120(1)(b) of the Ordinance stood restored and refund for Tax Year 2012, is to be issued within 15 days as per law. Thus, there is no need to go into legal and factual merits of the complaint. The complaint is, thus, disposed of with the direction to the Deptt to dispose of the Complainants' request for refund for Tax Year 2012, as per law and report compliance within 45 days.* No illegality has been committed in the process of the complaint and the order passed by the learned FTO. It was a matter pertaining to the alleged maladministration on the part of the Agency as the order of the CIR was not being given effect to and fell within the ambit of jurisdiction of the learned FTO.

8. The CIR (Appeals-IV) Lahore order dated 12.5.2017 is now subject matter of appeal before the ATIR which appeal is pending but as stated and affirmed by both sides, there is no stay order or any order suspending the operation of the order of the Commissioner in the appeal, which means that the order of the Commissioner dated 12.5.2017 is still intact which need to be given effect by the Deptt. However in order to protect the interests of the parties it is just and fair to observe that the implementation of the order of the learned FTO will be subject to the final outcome of the appeal pending before the Appellate Tribunal Inland Revenue (ATIR).

9. Accordingly, Hon'ble President has been pleased to order the disposal of the representation in the above terms.

  
(Dr. Zulfiqar H. Awan)  
Director General (Legal)

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The Chairman,  
Federal Board of Revenue,  
Islamabad.

No.66/FTO/2019 dated 03.02.2020

Copy for information to:

1. M/s. LTHJV Through Mr. Muhammad Shakeel, Director, 15-A, Canal Bank, Near Doctor Hospital, Lahore.
2. The Registrar, Federal Tax Ombudsman's, Islamabad
3. The Chief (Legal-I), Federal Board of Revenue, Islamabad
4. The Commissioner, Inland Revenue, Regional Tax Office-II, Lahore.
5. Mr. Hasan Kamran Bashir, LL.M(Harvard), DeJura Law Chamber, 76-B, Shah Jamal Lahore.
6. Mr. Hasan Kamran Bashir, LL.M(Harvard), House No.8, St.No.38, F-6/1, Islamabad.
7. Master file.

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(Dr. Zulfiqar H. Awan)  
Director General (Legal)